

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Evergy)
Metro, Inc., d/b/a Evergy Missouri Metro for)
Permission and Approval of a Certificate of)
Convenience and Necessity Authorizing It to)
Construct, Install, Own, Operate, Manage,)
Maintain, and Control a Natural Gas)
Electrical Production Facility)

Case No. EA-2026-0154

**PUBLIC COUNSEL’S OBJECTIONS TO
NON-UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and *Objects to Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM” or the “Company”), Staff (“Staff”) for the Missouri Public Service Commission (“Commission”), Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”), and Midwest Energy Consumers Group’s (“MECG”) Non-Uniform Stipulation and Agreement* as follows:

Procedural Background

1. On May 14, 2026, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM” or “the Company”) filed an application in the above styled case seeking a Certificate of Convenience and Necessity (“CCN”) under §393.170, RSMo, that would authorize EMM to construct, own, and operate a 440 MW simple-cycle gas turbine electric generating facility known as Mullin Creek #2 (“Mullin Creek #2”), to be located near Maryville in Nodaway County, Missouri.

2. In addition to the request for authorization under section 393.170, EMM further sought waivers of various Commission rules and a finding that “its decision to construct and operate Mullin Creek #2 for Evergy Metro’s Missouri customers is prudent” pursuant to Commission rule 20 CSR 4240-20.045(2)(C).

3. On October 2, 2026, EMM filed with the Commission a *Non-Unanimous Stipulation and Agreement* (“the Stipulation”) entered to between it, the Staff of the Public Service Commission, the Midwest Energy Consumer’s Group, and Renew Missouri.

4. Pursuant to Commission rule 20 CSR 4240-2.115(2), Public Counsel now files its objection to the Stipulation.

Factual Background

5. EMM is expecting a nearly 50% growth in peak capacity over the next ten years which it asserts “is driven in significant part by committed large-load customers, including data center customers, facilitated by the approval of the Large-Load Power Service (“LLPS”) tariff.”¹

6. “[EMM] has three specific large load customers that meet the criteria for base load planning [which] were incorporated into all load forecast scenarios (low, mid, and high) for the 2026 IRP.”²

7. “If the [data centers] located in EMM’s service territory were removed from Evergy Metro’s forecasted peak demands used in Evergy Metro’s capacity balance tables, EMM would have sufficient capacity without [Mullin Creek #2] for both the summer and winter planning sessions.”³

8. Given these facts, the evidentiary record shows that Mullin Creek #2 is being built solely to meet the needs imposed on EMM by the addition of these data centers.

9. The massive concentration of investment and revenue being placed on such a very small number of customers creates a “Single Point of Failure” scenario where if just one “data

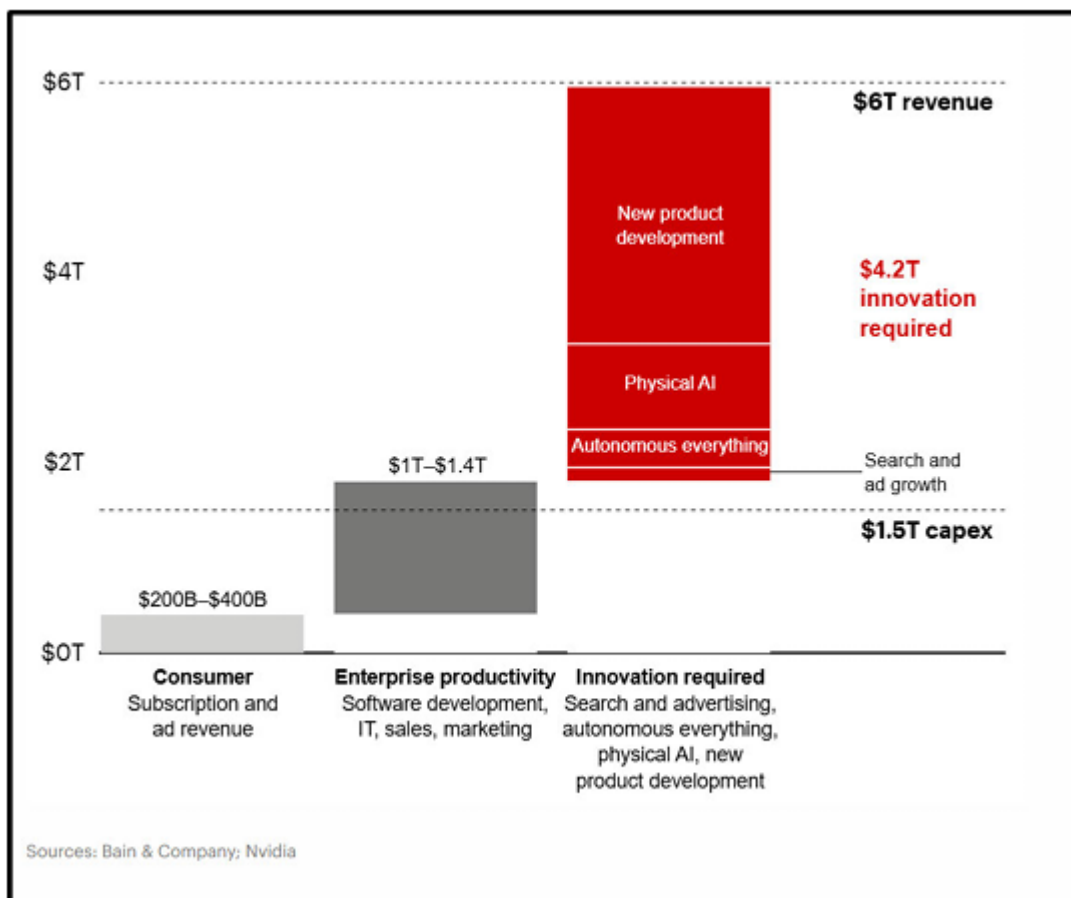
¹ EA-2025-0154, *Direct Testimony of Cody VandeVelde*, p. 6 ll. 9 – 14.

² *Id.* at p. 13 ll. 21 – 23.

³ EA-2025-0154, *Rebuttal Testimony of Trevor Rucker*, p. 9 ll. 20 to p. 10 l. 2.

center customer[] go[es] insolvent it could quickly have a cascading effect on existing customers, shareholders, and the ability to provide safe and reliable service at affordable prices.”⁴

10. This issue is compounded by the immense risks associated with these particular customers. For example, experts have estimated “that current and reasonably projected revenue streams [of these customers] only cover between \$1.2 to \$1.8 trillion of the \$6 trillion [capital expenditure] projected investment levels, leaving an immense \$4.2 trillion revenue gap that must be filled by unknown and/or unproven technologies like robotics, autonomous vehicles, and advanced drug discovery.”⁵



⁴ EA-2025-0154, *Rebuttal Testimony of Geoff Marke*, pg. 7 ll. 4 - 12

⁵ EA-2025-0154, *Surrebuttal Testimony of Geoff Marke*, p. 9 ll. 9 – 12.

11. Given concerns similar to these, both the Administration of Missouri Governor Mike Kehoe and that of United States President Donald J. Trump have issued executive orders which direct regulators to appropriately allocate the costs of new generation. Missouri Governor Mike Kehoe's executive order specifically directs regulators "to ensure that the construction and operation of data centers and other large power users do not result in higher energy rates for residential and small business Missourians, in accordance with the principle that large users should cover their full cost of electricity and infrastructure service and, when appropriate, contribute to the further development of sustainable, dispatchable power generation."⁶

Specified Reasons for Objection

12. Commission rule 20 CSR 4240-2.115(2)(B) requires a party objecting to a non-unanimous stipulation and agreement must "identify the specific provision of the stipulation and agreement that is objected to and provide a reason for each objection." Pursuant to that requirement, Public Counsel specifically objects to two of the Stipulation's thirty provisions, as follows:

Objection 1: Paragraph 3

13. Paragraph 3 of the Stipulation reads: "signatories agree that EMM's request for a finding of decisional prudence should be granted in regards to the generation type (fuel type) as to its decision to construct, acquire, own and operate Mullin Creek #2."

14. Public Counsel interprets this paragraph to mean that the signatories have stipulated only that EMM's decision to secure a generating facility that operates on natural gas (as opposed to other sources of generation such as coal, solar, or nuclear) is prudent.

⁶ Exec. Order No. 26-02, (Mo. Gov. Kehoe), Vol 51 Mo. Reg. 293 (Jan 13, 2026).

15. This creates confusion regarding the overall decisional prudence of the project.⁷

16. Given this confusion, Public Counsel objects to the third paragraph of the Stipulation to the extent it may be interpreted to mean that the fundamental decision to construct Mullin Creek #2 is prudent.

17. The evidence prefiled in this case overwhelmingly establishes that Mullin Creek #2 is being built to meet a need created by the introduction of data center customers taking service under EMM's LLPS tariff.⁸

18. Public Counsel has prefiled substantial evidence which demonstrates that there is significant risk associated with these customers which calls into question the long-term recovery of the costs of this asset from them, the cost causers.⁹

19. It is imprudent for EMM to construct, own, and operate a generating facility of this size and at this cost solely to meet the need of a select, small group of customers who are exposed to extreme business uncertainty without taking the necessary precautions advanced in the prefiled testimony of Public Counsel's witnesses which would mitigate the exposure of EMM's non-data center ratepayers to higher rates due to this generating facility.

20. Given the foregoing, Public Counsel objects to the third paragraph of the Stipulation to the extent it may be interpreted to mean that the fundamental decision to construct Mullin Creek #2 is prudent based on the Stipulation alone.

⁷For example, is it possible to conclude that the "generation type" is prudent but the overall construction of the generating facility is not?

⁸ See EA-2025-0154, *Rebuttal Testimony of Trevor Rucker*, p. 9 l. 20 to p. 10 l. 2.

⁹ See EA-2025-0154, *Rebuttal Testimony of Geoff Marke*, p. 7 ll. 4 – 12; *Surrebuttal Testimony of Geoff Marke* p. 9 ll. 9 – 12.

21. It is also important to note, however, that there are solutions available to address this problem of who pays for Mullin Creek #2 when EMM is building it to serve the needs of a select, small group of customers.

22. The critical concern regarding the prudence of this investment is the longevity of the very narrow and specific business model employed by the customers for whom this investment is needed.

23. This problem can be overcome simply by having those customers contribute significantly more capital up-front for these investments, thereby eliminating the risk of the investment becoming stranded should the LLPS customers cease taking electric service from EMM, for example by leaving EMM's service territory.

24. Public Counsel has presented a framework in the prefiled testimony of Dr. Geoff Marke for a way to achieve this outcome.¹⁰

25. If the Commission were to issue an order (or if parties were to simply agree) that such safeguards were a necessary condition of the requested CCN, then the concerns underlying this objection would be resolved and Public Counsel would be free to withdraw it.

26. Absent that, however, Public Counsel objects to paragraph 3 of the Stipulation for the reasons stated above.

Objection 2: Paragraph 2

27. Paragraph 2 of the Stipulation states, in part, that the Commission should grant the requested CCN.

¹⁰ See EA-2025-0154, *Rebuttal Testimony of Geoff Marke*, p. 17 (Potential Path Forward section).

28. Public Counsel objects to this paragraph to the extent that EMM does not need Mullin Creek #2 for EMM to provide electrical service to any of its current or prospective customers absent those customers taking service under the LLPS tariff.

29. The lack of need of Mullin Creek #2 to provide electrical service is of material importance because it is the first of the five factors the Commission employs when evaluating applications for CCNs.¹¹

30. As stated above, the evidence presented in this case overwhelmingly establishes that EMM is planning to build Mullin Creek #2 to meet the need created by the introduction of large-load customers taking service under EMM's LLPS tariff.¹²

31. However, EMM has taken the position, in both this case and its contemporaneously pending general rate proceeding,¹³ that all of its customers, including both residential and small commercial customers, should pay for Mullin Creek #2 through EMM's rates, *i.e.*, EMM should recover the costs of Mullin Creek #2 from all of its customers.

32. EMM advances this position based on a false narrative that Mullin Creek #2 is being built to meet the need to serve all of its Missouri customers, despite the aforementioned abundance of evidence to the contrary.

33. EMM's insistence on clinging to this false narrative is the reason Public Counsel feels that it must object to paragraph 2 because failure to do so may be viewed by the Commission as Public Counsel acquiescing to EMM's position that residential and small commercial customers

¹¹ See, e.g. EA-2025-0238, *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, pg. 3 ("The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service")

¹² see EA-2025-0154, *Rebuttal Testimony of Trevor Rucker*, p. 9 l. 20 to p. 10 l. 2.

¹³ Case no. ER-2026-0143.

should subsidize EMM's data center customers who are taking service (or intend to take service) under EMM's LLPS tariffed rate.

34. As with its first objection, Public Counsel's objection here is not to take issue with the fundamentals of the underlying project but, rather, a product of EMM's position on who should bear the risk of this investment and who ultimately should pay for it.

35. And again, as with its first objection, there are solutions readily available to the Commission to address these concerns within the context of this CCN case.

36. If the Commission were to reach a factual conclusion (or parties were to simply agree) with what the prefiled evidence plainly establishes, namely that Mullin Creek #2 is to be built only because of the need for additional capacity caused by the data centers entering into EMM's service territory and taking electric service on its system (and would not be needed absent these specific customers), then the concerns underlying this objection would be resolved and Public Counsel would be free to withdraw it.

37. Absent that, however, Public Counsel objects to paragraph 2 of the Stipulation for the reasons stated above.

Conclusion

38. Public Counsel's foregoing objections are being made solely due to Public Counsel's understanding of its legal directive to ensure that the cost causing LLPS customers will supply sufficient rate revenues to cover the costs the cause EMM so as to prevent additional costs and risks being borne by EMM's existing residential and commercial customers.

39. The prefiled evidence in this case shows that EMM's intention is that the cost of Mullin Creek #2, which EMM plans to build solely due to the addition of data center customers'

load, will result in significant increased costs and additional risks for EMM's existing residential and commercial customers.¹⁴

40. The Commission has within its power the ability to issue an order granting EMM the CCN it requests – thereby permitting the development of this generating facility to move forward – without significant costs and risk increases being borne by EMM's existing residential and commercial customers simply by imposing conditions consistent with the recommendations provided by the OPC.

41. Thus, Public Counsel objects.

Note of Concern

42. Notwithstanding the foregoing, Public Counsel also wishes to draw the Commission's attention to a point of potential concern regarding the Stipulation.

43. EMM is requesting construction work-in-progress ("CWIP") treatment associated with Mullin Creek #2 pursuant to § 393.135.2, RSMo.

44. This statute contains the following provision: "The commission shall determine, in a proceeding under section 393.170, the amount of construction work in progress that may be included in rate base."

45. Public Counsel interprets this statutory provision to mean that the Commission must make an affirmative determination of "the amount of construction work in progress that may be included in rate base" during and within a CCN case (the "proceeding under section 393.170").

46. It is Public Counsel's position that a failure to do this legally prevents an electric utility from recovering CWIP.

¹⁴ See EA-2025-0154, *Surrebuttal Testimony of Geoff Marke* p. 4 figure 1.

47. This is important because the Stipulation has failed to include a provision either requesting the Commission determine, or agree to, “the amount of construction work in progress that may be included in rate base.”

48. To forestall the burden of future litigation and potential appeal, Public Counsel believes it is important to notify the Commission of this absence, which may be remedied at the Commission’s discretion depending on the manner in which it rules in this case.

WHEREFORE, the Office of the Public Counsel *Objects to Evergy Metro, Inc. d/b/a Evergy Missouri Metro, Staff, Renew Missouri Advocates, and Midwest Energy Consumers Group’s Non-Unanimous Stipulation and Agreement* as set forth above.

Respectfully,

/s/ Nathan Williams
Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of October 2026.

/s/ Nathan Williams